

RESOLUTION NO. 12-104

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FORM OF "KEY WEST CITY MARINA AT GARRISON BIGHT CHARTERBOAT DOCKAGE AGREEMENT" (FIVE-YEAR TERM); PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:


Section 1: That the attached form of "Key West City Marina at Garrison Bight Charterboat Dockage Agreement," for a term of five years, is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3rd day of April, 2012.

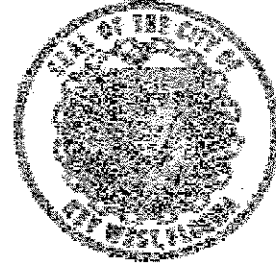
Authenticated by the presiding officer and Clerk of the Commission on April 4, 2012.

Filed with the Clerk April 4, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



EXECUTIVE SUMMARY

TO: City Commission
FROM: Mark Tait
CC: Jim Scholl, Marilyn Wilbarger
DATE: February 16, 2012
SUBJECT: City Marina Charter Boat Lease Renewal

ACTION STATEMENT:

The purpose of this item is to approve the five-year lease renewal that is stipulated in the current Charter Boat Lease Agreement.

BACKGROUND:

On September 30th 2010 the most recent five-year lease agreement between the City of Key West and the charter boats at City Marina expired. The lease renewal being proposed will contain the same terms and conditions as the first 5-year lease except that a \$1 per foot monthly capital improvement assessment will be added.

There are 34 charter boats that will be affected by the proposed 5-year lease renewal. There is a mixture of sizes of charter boats with the majority being off shore boats averaging 35 feet, two head boats averaging 60 feet and seven light tackle boats averaging 28 feet.

During the first 5-year term major renovations were completed on Amberjack Pier. During the second 5-year term renovation of Bonefish and Bonita Piers are anticipated if monies are available.

The 5-year lease renewal start date, if approved, will be October 1st 2010. The dockage lease rate will remain the same for the second 5-year term increasing annually by CPI or 3% whichever is greater. Additionally a \$1 per foot capital improvement assessment will be charged monthly for future capital improvements to the marina and begin April 1st 2012.

OPTIONS/ ADVANTAGES/ DISADVANTAGES:

1. The City Commission can accept staff's recommendation to approve the new lease and rate structure as proposed.
2. The City Commission can change staff's recommendation as it wishes.
 - The lease renewal is automatic and the terms and conditions of the lease cannot be changed except for the rate.
 - The charter boat base rate was increased by CPI on October 1st 2011.
 - The charter boat tenant's original lease is expired and they are currently on a month to month agreement.

FINANCIAL IMPACT:

There will be a positive increase of revenue of either CPI or 3% annually whichever is greater derived from the charter boat leases. There will also be approximately \$16,400 collected annually from the charter boats to supplement the City Marina capital improvement fund.

RECOMMENDATION: Staff recommends that the City Commission approves the 5-year lease renewal.

ATTACHMENTS:

Current 5-year charter boat lease (expired)
Proposed 5-year charter boat lease renewal

Key West City Marina @ Garrison Bight
Charterboat Dockage Agreement

This Agreement is made between the City of Key West City Marina (hereinafter referred to as "Lessor", which term as used throughout this Agreement shall mean and include the City of Key West and the below named Lessee.

Lessee is identified as follows:

Lessee's Name: _____

Home Address: _____

City and State: _____

Business Name: _____

Business Occupational License Nos. (City): _____

(County): _____ (Other): _____

Business Address: _____ Business Phone: _____

City and State: _____

Name of Lessee's Representative (if any): _____

Address: _____ Home Phone: _____

City and State: _____

Name of Vessel: _____

Overall Length: _____ Beam: _____ Draft: _____

Registration #: _____ Documentation #: _____

Type: P _____ Gas _____ Diesel _____

Carrier of Insurance on Vessel: _____

Address: _____

In consideration of the covenants and conditions hereinafter set forth, Lessor and Lessee agree as follows:

1. Purpose

In return for rent payments and other valuable consideration and covenants as set out below, Lessor wishes to provide certain dockage space for the temporary use of Lessee, who wishes to purchase the right to temporary use of such space through regular rental payments and through faithful performance of the covenants and stipulations herein.

2. Dockage Space

The certain dockage space hereby leased by Lessor to Lessee is identified as berth _____ in the Key West City Marina at Garrison Bight in the City of Key West, Florida. Said berth is leased for the exclusive purpose of docking the above named vessel and conducting the above-referenced business only. Lessee shall not sublease said berth or conduct or allow to be conducted any other business operation from said berth. In the event that Lessee is temporarily unable to use the identified vessel in said berth because of necessary repair work or other business reasons, Lessee may substitute another vessel either owned or leased by the Lessee on a temporary basis for up to six months, with notification provided in writing to the Lessor prior to the substitution. Lessee shall not make such a substitution on more than one occasion per each two calendar years of the lease term.

3. Term

This agreement is effective commencing the _____ day of _____, 2010, and unless terminated as otherwise specified herein, shall extend through September 30th 2015. ("Lease Term").

4. Rental Rate: Changes

The monthly rental rate shall be a base rent of \$17.45 per foot, plus \$1 per foot for a capital improvement assessment, plus solid waste (garbage), plus state sales tax, plus an assessment for advertisement and promotion of Charterboat Row which is five (5) percent of the base rent. Returned checks will be assessed the maximum amount provided in Florida Statutes Section 166.251. Solid waste is defined as the Lessee's equal proportion of the total Charter Boat Row monthly garbage bill. Lessee agrees that the rental rate shall be adjusted, at the commencement of each fiscal year for the City of Key West by increasing the base rent by any change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers, as reported by the Bureau of Labor Statistics or at the minimum rate of 3%, whichever is greater. The aforementioned assessment for advertising and promotion shall be disbursed to the Charter Boat Association on a quarterly basis to be used by the Association for purposes of advertisement and promotion of Charter Boat Row activities.

5. Deposit

Lessor hereby acknowledges receipt from Lessee of two month's base rent as a security deposit, forfeitable to Lessor as partial payment for any damages caused by Lessee's failure faithfully to observe and perform the terms and obligations of this Agreement. Said deposit shall otherwise be returned without interest to Lessee upon lawful termination of this Agreement.

6. Payments Due

Rental payments are due and payable monthly in advance, by the first day of each calendar month. Payment may be made at the City Marina Office, 1801 North Roosevelt Ave Key West Florida, between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday, holidays excluded. Payments may be mailed to City Marina @ Garrison Bight, P.O. 1409, Key West, Florida, 33041-1409

7. Late Payments

Any rental payment not received by Lessor by 5:00 p.m., the 5th day of the month is subject to a fifteen (15) percent penalty charge.

8. Notice to Lessee

Lessee agrees that notice of the actions or intentions of Lessor is binding upon Lessee if delivery by certified mail is attempted at the following address:

(Name)

(Number) (City, State, Zip)

Lessee further agrees that said binding delivery of notice shall be considered fully accomplished for all purposes hereunder regardless of whether delivery to the above address is accepted or regardless of the identity of any person accepting delivery. Lessee is fully and solely responsible for the receipt of notice at said address.

9. Changes in Information

Lessee agrees to deliver to Key West City Marina, 1801 N. Roosevelt Blvd., Key West, Florida 33040 written notice of any changes in any of the information furnished by Lessee in this Agreement.

10. Default, Removal, Sale

Prompt and timely delivery of all payments due for the use of the rented dockage space and strict observance of the conditions, covenants and regulations made a part hereof, are essential conditions upon which this Agreement is made and accepted. Any failure by Lessee to comply with each of said terms shall constitute a default by Lessee and shall give Lessor the right at its option to terminate this Agreement and any license Lessee may have hereunder. Lessor may so terminate by mailing to Lessee a notice of termination in the manner provided by Paragraph 8 above at least three (3) days prior to the effective date of termination. If Lessee fails to vacate the dockage space within seven (7) days after delivery of said notice as provided in Paragraph 8, Lessor shall have the right, at its option, to pursue any or all of the following remedies:

- a) To board the vessel and, by its own power or by placing it in tow, remove from the dockage space and from all property of Lessor both the vessel and any other personal property of Lessee found in or adjacent to the dockage space. Said vessel and personal property shall be removed to dockage or mooring chosen at discretion of

Lessor and Lessee hereby designates Lessor as its attorney-in-fact for the purpose of acting in it's place for purposes of such removal and relocation, and agrees that Lessor and its designee (s) shall be required to exercise ordinary and reasonable care in such purposes. Lessee hereby releases and relieves Lessor and its designee (s) from loss or damages occurring during such removal performed in the exercise of ordinary and reasonable care. Lessee further agrees to pay all costs incurred by Lessor in the removing, relocation and/or storage of the vessel and personal property, including but not limited to wages, insurance premiums, towing and storage costs, all of which shall become a lien upon vessel; and

- b) To pursue any remedy provided by state or federal law; and
- c) If nonpayment of rent continues for six (6) months, to sell the vessel at a nonjudicial sale after 30 days notice to Lessee as provided in Paragraph 8 above. The remedies provided in Florida Statutes Section 328.17 for such nonjudicial sale of a vessel are hereby specifically included and incorporated in this Agreement as an additional remedy available to Lessor.

11. Lien, Attorney's Fees

Lessee agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Lessor in the collection of any unpaid sums due under this Agreement or by Lessee's default in performance of any of the conditions or covenants stated herein or in the Key West City Marina Charter boat Marina Regulations governing the dockage space and adjacent premises. Lessee agrees that the Lessor shall have a lien against the vessel, its appurtenances and contents, for such unpaid sums, or for any damage to docks, other vessels or property, or to invitees of the Lessor caused by Lessee or the vessel.

12. Release, Indemnity

This agreement is for berthing space only, and such space is to be used at the sole risk of the Lessee. Lessee hereby agrees that Lessor shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of the Lessee's personal property, guests, passengers or invitees, or for any loss or damage of any kind to the same due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains or other calamities. Lessee agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that Lessor is not responsible for injuries to persons or property occurring on Lessor's property. Lessee, personally and for its family, heirs, and assigns, hereby releases and agrees to hold Lessor harmless from all liability to same for personal injury, loss of life, property damage beyond normal wear and tear. Lessee, personally and for its family, heirs, and assigns agrees to indemnify Lessor for all liability for personal injury, loss of life, and property damage to Lessee, its family, heirs, assigns, agents, employees, invitees and guests caused by fault of Lessee. This release and indemnification shall include, but not be limited to (1) acts in connection with Lessee's vessel, motors and accessories while it is on or near Lessor's property including the rented space, or while it is being moved, docked, hauled, or launched; (2) loss or damage to Lessee's vessel, motors and accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto. Lessee further

agrees to indemnify Lessor for all damages or losses caused by or arising from fault of Lessee's vessel and appurtenances, personal property, guests, passengers, family or invitees. The indemnification provided herein shall include, but not to be limited to all costs, expenses and reasonable attorney's fees, including appellate attorney's fees, reasonably incurred by Lessor based on the foregoing; provided, however, that Lessor shall give Lessee written notice of any such claim within time to reasonably allow Lessee to appear and defend or pay and discharge such claim. At its option, Lessor may defend against such claims and by so doing shall not waive or discharge Lessee from its obligations to defend and indemnify as herein contained.

13. Condition of Premises

Lessee hereby accepts the premises in the condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use hereof under this Agreement, and to make good to said Lessor immediately upon demand for damage caused by any act or neglect of the Lessee, or of any agent, guest, passenger or person under the control of the Lessee, and the Lessee shall be liable to the Lessor and shall forever hold harmless the Lessor from any and all such damage or loss occasioned to the premises or any of the Lessor's docks, or any of its properties caused by the acts or negligence of the Lessee or any agents, employee, guest, passenger or person under the control of the Lessee. This Agreement is for the use of berth space only, such space to be used at the sole risk of the Lessee, and the Lessor shall not be liable for the care or protection of the vessel, her appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, her appurtenances or contents, unless such loss or damage is due to the acts of negligence of the Lessor or any agents, employee, or person under the control of the Lessor. There is no warranty of any kind as to the condition of the docks, walks, gangways, ramps or mooring gear, nor shall the Lessor be responsible for the injuries to persons or property occurring upon the Lessor's property for any reason.

14. Vessel Insurance

Lessee agrees that Lessor is not in any way an insurer of Lessee's vessel, property, family, invitees, employees, agents, passengers or guest. Lessee hereby agrees to maintain and pay for a marine insurance policy providing such protection and indemnity throughout the term of this Agreement. Said policy shall protect Lessor and Lessee from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of Lessee or its vessel, equipment, agents, invitees, passengers, guests or employees. The minimum limits of such policy shall be \$1,000,000 for any one person or \$3,000,000 for more than one person arising out of one incident. Lessee agrees to furnish Lessor with a certificate of insurance or copy of the policy, each of which will on its face show the foregoing information. Lessor shall be listed as a certificate holder on the policy for purposes of notification of cancellation, termination, or renewal.

15. Proof of Ownership; Change in Ownership

Prior to exercising any rights whatsoever pursuant to the terms of this Agreement, and at such times during the term of this Agreement as Lessor may request, Lessee shall furnish to Lessor for its review an original or certified copy of proof of its ownership of the above vessel; said proof shall consist of an original or certified copy of either a state registered title to the vessel or documentation by the U.S. Coast Guard of foreign sovereign. Lessee warrants that it owns the above vessel, or will own same at time of

berthing in slip, and will allow inspection by Lessor prior to placement; in the event the vessel is not satisfactory to the Lessor, it may not be berthed and another vessel must be located. Lessor shall have prior inspection and approval rights for any other vessel to be berthed, and shall have prior inspection and approval rights regarding any change of vessel.

16. Person Signing

The person signing below does hereby certify that the description of the above vessel is correct and that he/she is the registered, lawful owner of the vessel, and is authorized to subject the vessel to all provisions of this Agreement, including but not limited to those providing for liens against it.

17. Dockage to Signer and Particular Vessel Only

Lessee agrees that Lessor is under no obligation to furnish dockage space to any party other than the original signer of this Agreement, or to any vessel other than that described herein.

18. Government Laws and Marina Regulations

Lessee agrees to strictly comply with all federal, state, and local laws pertinent to any subject matter of this Agreement, including but not limited to those pertaining to marinas or boating, specifically including United States Coast Guard (USCG) regulations concerning pre-employment and random drug testing, USCG regulations pertaining to the number of passengers for hire and all federal and state fisheries regulations. Lessee further agrees to strictly comply with all Key West City Marina, Charterboat Marina Regulations which are hereby incorporated into, and by reference made a part of this Agreement. Lessee further agrees to abide by all amendments to said regulations duly enacted by Lessor during the term of this Agreement; provided, however, that Lessor shall afford Lessee 15 days written notice, delivered in accordance with Paragraph 8 above, prior to implementing any such duly-enacted amendments.

19. Peaceable Use

Lessee agrees to use peaceably the dockage space assigned hereby, and agrees not to do or allow, either individually or with others, any act which has the effect, in the sole judgment of Lessor, of disturbing the peace or of disturbing, inconveniencing or subjecting to physical jeopardy the marina premises, other persons, or other vessels. Lessee further agrees to do no act which impedes or disrupts the orderly operation of the marina or any portion of it, including but not limited to marina management, operation and revenues.

20. Sanitation Device

Lessee's vessel shall contain a marine sanitation device with current U.S. Coast Guard approval for marine use. Said device shall be properly installed, properly functioning, and used for all waste while the vessel is at dock. Failure to strictly comply with the provisions of this Paragraph shall be a default under this Agreement.

21. Lessee's Inspection

Lessee acknowledges having inspected the dockage space rented by this Agreement, and hereby accepts it in "as is" condition for berthing the above-described vessel. Lessee agrees that Lessor makes no warranty, guarantee, or assertion of any kind whatsoever concerning the condition of the docks, piling, piers, walks, gangways, ramps or berthing gear, and will not be responsible for injuries of any nature or cause including Lessor's negligence, to persons or property on Lessor's property or marina premises.

22. No Liveaboard

Lessee agrees that the vessel shall not be used or rented for purposes of domicile or overnight residence while moored in the dockage space.

23. Inspection

Lessee agrees that Lessor shall have the right, upon 24 hours notice, to enter the vessel and dockage space during reasonable hours in order to determine whether Lessee is in full compliance with the terms of this Agreement and all applicable laws and regulations.

24. Signs; Advertisements

Lessee agrees that no signs or advertisements will be placed in or about the leased dockage space without Lessor's prior written approval.

25. Lessee's Insolvency

If Lessee becomes insolvent or enters bankruptcy proceedings during the term of this Agreement, Lessor is hereby irrevocably authorized, at its sole option, to cancel this Agreement as for a default. Lessor may elect to accept rent from any receiver, trustee, or other judicially-appointed officer during said term without affecting Lessor's rights under this Agreement, but no such officer shall otherwise have any right, title or interest under this Agreement.

26. Assignment Limited; Option of Purchaser of Vessel and Business.

Lessee's rights under this Agreement shall not be assignable; however, in the event of the death of the above-referenced Lessee during the Lease Term, the rights and obligations of Lessee hereunder may be assumed by an immediate family member of said Lessee for the remainder of the Lease Term, subject to the right of first refusal referred to in Paragraph 3, above. In the event that both the above-referenced business and the above-referenced vessel are sold by Lessee to a single purchaser, as evidenced by appropriate proof of sale such as transfer of City and County occupational licenses in addition to transfer of title to the vessel, and provided that said purchaser meets all qualifications required under this Lease, said purchaser shall have the option of entering into a new lease for the subject berth upon the same terms and conditions as are being offered at the time by Lessor to other Lessees of Charter boat Row dockage spaces. However, the term of the new lease shall be for a term of not less than the period remaining on the existing lease. Said option is non-assignable, and must be exercised within thirty (30) days of the business sale. Lessee may obtain preliminary approval of the purchaser by applying to the Lessor prior to such sale to the purchaser. Lessor shall provide preliminary approval or denial of the purchaser not later than forty-five (45) days from the receipt of the application from

Lessee. Lessee shall provide such information and documents as may be needed to determine the fitness of the purchaser. Upon change of ownership as described herein, Owner shall pay to the Lessor a transfer fee of \$400

27. Taxes

Should any ad valorem or other taxes be imposed upon the premises involved in this lease, or upon the Lessee, Lessor, occupant or whomsoever, from any source whatsoever, the same shall be the responsibility of the Lessee and the Lessee shall pay the same promptly.

28. Maintenance of Docks

- a) The Lessee agrees to keep the docks clean and free and clear of debris, including the sidewalk area adjacent to the dock.
- b) The Lessee agrees not to construct anything on or adjacent to the dock, unless approved by Lessor.
- c) All improvements to the docks shall remain on the premises and become property of the Lessor.

29. Lien

The Lessee agrees that the Lessor shall have a lien against the above-described vessel, her appurtenances and contents for unpaid sums due or to become due for the use of dock facilities or services or damage caused to any docks or property of the Lessor.

30. Termination

This Agreement shall be terminated upon any one of the following conditions:

- a) By Lessee's written notice to the Key West City Marina, 1801 North Roosevelt Blvd., Key West, Fl 33040, accompanied by tender of unpaid fees or charges;
- b) By breach of any of the covenants or provisions of this Agreement, including the Key West City Marina, Charter boat Marina Regulations as provided by Paragraph 17 above; provided, however, that Lessee shall be entitled to a single warning of any violation of said Marina Regulations delivered as provided in Paragraph 6, and shall have 5 days after such delivery in which to achieve compliance. Subsequent violations of the same Marina Regulations shall terminate this Agreement, and Lessor shall not be required again to issue a warning.
- c) By the dock becoming unserviceable for any reason; provided that Lessor shall repair the dock within a reasonable time period, and further provided that during such repairs Lessee shall have a right of first refusal of available dockage space on an equal basis with other similarly-situated Lessees.
- d) By sale or transfer of ownership or control of the vessel identified herein.

31. Stock Sale/Transfer

Lessee represents that no issuance or transfer of stock can be accomplished without unanimous approval of the Board of Directors of Lessee, and agrees to seek prior approval of Lessor in the event that more than fifty percent (50%) of said stock is to be transferred or further shares are to be issued.

32. Termination by Lessee

Lessee shall have the right to terminate this Lease, provided that the Lessee shall give written notice to Lessor not less than two (2) months prior to the date Lessee intends to terminate.

33. Parking

City shall allow Lessee to count parking spaces located in the City Marina parking lot to meet the off-street parking requirement contained in City Code Section 35.09. No individual parking spaces shall be assigned or reserved for Lessee.

34. Personal Property

All personal property placed in or moved on the premises above described shall be at the risk of the Lessee and the Lessor shall not be liable for any damage or loss to said personal property for any act of negligence of any co-Lessee or occupant, or of any other person whomsoever.

35. Condition of Premises

Lessee hereby accepts the premises in the condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use thereof under this Agreement, and to make good to said Lessor immediately upon demand and damage caused by any act or neglect of the Lessee, or of any agent, guests, passengers or person under the control of the Lessee, and the Lessee shall be liable to the Lessor and shall forever hold harmless the Lessor from any and all such damage or loss occasioned to the premises or any of the Lessor's docks, or any of its other properties caused by the acts or negligence of the Lessee or any agent, employee, guest, passenger or person under the control of the Lessee. This Agreement is for the use of berth space only, such space to be used at the sole risk of the Lessee, and the Lessor shall not be liable for the care or protection of the vessel, her appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, her appurtenances or contents, unless such loss or damage is due to the acts or negligence of the Lessor or any agents, employee, or person under the control of the Lessor. There is no warranty of any kind as to the condition of the docks, walls, gangways, ramps or mooring gear, nor shall the Lessor be responsible for the injuries to persons or property occurring upon the Lessor's property for any reason.

36. Time; Lessor's Rights Cumulative

Time is of the essence of this Agreement. Lessee agrees that Lessor's rights under this Agreement are cumulative, and that Lessor's failure to exercise any such rights shall not operate to forfeit same.

37. Headings Not Part of Agreement

Lessor and Lessee agree that any heading which labels any paragraph herein is for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of the paragraph or of this Agreement.

LESSEE:

LESSOR:

By: _____
City of Key West

Print Name

Title

Date

Date

Witness

Witness

Witness

Witness

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 20 __, by _____, Lessee, who is personally known to me or has produced _____ as Identification and who did/did not take an oath.

Notary Public
State of Florida at Large
My commission expires: